

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**AMERICAN YOUTH HOSTELS,
INC.**

**v. BOARD OF ASSESSORS OF
THE TOWN OF WEST TISBURY**

Docket No. F328768

Promulgated:
May 29, 2018

This is an appeal under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of West Tisbury ("appellee" or "assessors") to abate taxes on certain real estate located in West Tisbury owned by and assessed to the appellant, American Youth Hostels, Inc. ("AYH" or "appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2015 ("fiscal year at issue").

Chairman Hammond heard this appeal. Commissioners Rose and Good joined him in a decision for the appellant. Commissioners Scharaffa and Chmielinski dissented.

These findings of fact and report are made pursuant to requests by the appellant and the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Christopher Minue, Esq. and Robert Brooks, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2014, the relevant assessment date for the fiscal year at issue, the appellant was the assessed owner of a 2.51-acre parcel of land improved with a building that was operated as a hostel, located at 525 Edgartown Road in West Tisbury ("subject property"). The hostel was open for operation from late May to mid-October.

The appellant timely filed with the assessors its Form 3ABC and a copy of its Form PC on February 28, 2014. Nevertheless, the assessors valued the subject property at \$811,300 and assessed a tax thereon, at a rate of \$5.71 per \$1,000, in the total amount of \$4,771.25, including the Community Preservation Act surcharge. In accordance with G.L. c. 59, § 57, the appellant timely paid the tax due without incurring interest. On April 30, 2015, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors prior to the due date of the first installment of the semi-annual actual tax bill for the subject property. On July 14, 2015, the assessors denied the appellant's Application for Abatement. On October 5, 2015, in accordance with

G.L. c. 58A, § 7 and c. 59, §§ 64 and 65, the appellant seasonably filed a petition with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for the fiscal year at issue.

The appellant presented its case in chief through the testimony of its witness, AYH Chief Executive Officer Russell Hedge, as well as the submission of documents.

AYH is a nonprofit entity granted federal tax-exempt status under Internal Revenue Code § 501(c)(3). AYH was founded in 1934, and its stated charitable purpose, as described in its by-laws, is as follows:

Section 2.1 Purpose. ... to help all, especially the young, gain a greater understanding of the world and its people through hostelling. The Corporation seeks to be a leading hostel provider in the world, a valued source of experiential learning, a widely recognized champion for intercultural understanding, a vibrant presence in communities across the United States, and an effective advocate for youth travel.

Section 2.2 Hostelling Defined. Hostelling is educational travel, local and global, using programs and hostels to facilitate interaction between travelers and community members, and to promote discovery of ourselves, local culture, and the world.

In furtherance of this mission, AYH directly owns and operates 34 hostels in the United States, including the subject property. A hostel offers accommodations to its

members that are more affordable than a traditional hotel. Mr. Hedge testified that, during the relevant time period, a night's stay at the subject property cost approximately \$37 per night, plus the cost of a membership card if the guest was not already a member of AYH; annual membership fees were \$28 for 18 to 55 year olds, \$18 for those over 55, and free for anyone under 18. AYH also sold nightly membership cards at the subject property for \$3. Mr. Hedge stated that the subject property's rate was significantly below the standard lodging rate on Martha's Vineyard and thus enabled a greater number of guests to experience the area.

While a hostel provides lodging accommodations, the appellant maintains that the subject property was not simply a low-cost hotel. Mr. Hedge described hostelling as an "experiential learning experience." He testified that youth hostelling began in the early 1900s, when a German schoolteacher, Richard Sherman, set up a chain of schoolhouses to be used for overnight stays by young people on school outings. He testified that Mr. Sherman had previously served in World War I along the Maginot Line, a site of hostility between German and French troops. During Christmas one year, the otherwise hostile troops reportedly

came together to celebrate and to play soccer in a moment of peaceful truce.

As Mr. Hedge testified, Mr. Sherman was apparently inspired by this experience: "[H]is take-away from that was that if you bring people together and they can talk, that the world can be a better place." Mr. Hedge testified that the appellant's mission is based upon the principal of "cross-cultural understanding," which he described as recognizing that there are "various cultures around the world [and] if we can bring people together and they can talk, we can eliminate misunderstanding, and that we can defeat destructive stereotypes."

The subject property, like all AYH properties, was set up to further AYH's mission of promoting cross-cultural understanding by encouraging communal living. During the relevant time period, the subject property offered the following accommodations: a 20-bed dormitory; a 16-bed dormitory; a 10-bed dormitory; and an 8-bed dormitory. The hostel did offer limited accommodations for those wishing to have more privacy, such as a family traveling together: 1 private room with 5 single beds; 1 private room with 4 single beds; 1 private room with 2 single beds; and 1 private room with 1 double bed and 2 single beds. However, Mr. Hedge testified that the vast majority of travelers

slept in the dormitory-style rooms, and that all guests agreed to participate in a shared living experience that included the use of communal bathrooms,¹ communal living-room areas, a communal self-serve kitchen, and a communal dining area. As Mr. Hedge explained, the building's design was "all about entering the building and taking the effort to respect the other person that's sharing your room and sitting down next to you when you're eating lunch, who you're cooking next to when you're cooking your dinner."

Mr. Hedge further testified that the subject property limited the length of stay of its guests to no more than 7 days, because "what we found was the longer that people stayed in the hostel, the more they felt ownership of the hostel . . . and their territory, and it got in the way of the shared living experience." Mr. Hedge testified that, when day limitations first went into effect, "occupancy suffered . . . [b]ut it was the way that we were able to maintain the collegial atmosphere," and therefore worth the cost.²

Mr. Hedge testified to the differences between a hostel and a hotel, particularly the more stringent rules

¹ The subject property does contain an individual bathroom attached to a bedroom, for the use by guests who have difficulties with mobility.

² Mr. Hedge testified that AYH began instituting day limitations at the subject property in 2007 with a 21-day limit, which AYH then shortened to 14 days in 2011 and further shortened to 7 days in 2012.

required of the hostel guests. Hostellers are asked to make their beds and to clean up after themselves, particularly after meal preparations and by stripping their beds at the end of their stay. There are also quiet hours and rules prohibiting food or beverages other than water in the sleeping rooms, as well as rules prohibiting alcohol consumption, public intoxication and drug use at the property.

Mr. Hedge testified that AYH furthered its charitable mission primarily by operating its hostels. As he explained, "the building is our program." Mr. Hedge testified that AYH's operation of a hostel must comply with standards set by the American Association of Colleges and Universities, specifically the standards for intercultural knowledge, civil engagement, and global learning. At the subject property, AYH employed managers with educational backgrounds, not just degrees in hospitality, to further the experiential learning experience. For example, the hostel provided free pancake breakfasts that include staff-facilitated discussions to encourage group interaction and learning on a particular topic related to AYH's mission.

In addition to operating its hostels on a daily basis, AYH further promoted its mission through its national organized programs. Mr. Hedge testified to examples of

AYH's various educational programs, which centered upon intercultural knowledge, civic engagement, and global learning. First, the "Great Hostel Giveback" provided free use of a hostel to groups that traveled to a destination to engage in a community project. Second, through the "IOU Respect" program, AYH partnered with hostelling programs in Germany, France, Lebanon, Egypt, and Tunisia to provide a cross-cultural exchange opportunity. Third, through the "Community Hostelling Fund," AYH provided scholarships for international travel for young people with a financial need. Fourth, AYH participated in "Sleep for Peace" with the United Nations on International Peace Day, with each AYH hostel sponsoring an activity on this day. Examples have included a "bike-in movie," yoga on the beach, a peace-themed discussion over a pizza dinner, and "encouraging peaceful selfies" to social media. At the subject property, AYH promoted "Sleep for Peace" by asking guests to sign a set of bed sheets and by offering guests pancakes in a communal meal organized to celebrate the day. Finally, an AYH program offered in partnership with the Girl Scouts USA, another nonprofit organization, offered scouts the opportunity to earn a badge by participating in hostel activities and recording their experience.

The appellant is a member of the International Youth Hostel Federation ("IYHF"), a worldwide consortium of nonprofit hostelling organizations, including AYH as the sole affiliate in the United States. IYHF requires its affiliates to be non-political and a nonprofit organization whose main purpose is the operation of youth hostels, particularly to "promote the education of all young people of all nations, but especially young people of limited means, by encouraging them in a greater knowledge, love and care of the countryside and an appreciation of the cultural values of towns and cities in all parts of the world."

The subject property in West Tisbury offered programs designed to encourage youth use of the hostel. For example, the "Youth Opportunities Through Hostelling" ("YOUTH") program offered community youth groups the opportunity to experience hostelling virtually free of charge. AYH provided them a donated overnight stay, transportation and most meals, asking them only to provide their own lunch, which Mr. Hedge explained was part of the "self-reliance piece" to the program. To be eligible for YOUTH, a community group had to meet certain requirements, including being a community-based organization, demonstrating how its participation in YOUTH would support the organization's educational goals, and creating a plan

for the shared travel experience and how to describe its impact to the community.

However, while founded as an organization specifically aimed at encouraging youth travel and engagement, AYH membership did not discriminate based on age. Membership was open to all and had three categories based on age: youth (under 18); adult (18-54); and senior (55 and older). In the early 1990s, AYH rebranded itself as Hostelling International USA, in order to reinforce the notion that AYH was open to all ages, not simply youth. Mr. Hedge testified that the appellant's express purpose in the rebranding was to "encourage greater intergenerational interaction" at its hostels.

The appellee did not present a case but did submit documents, including jurisdictional documents as well as other documents, in an attempt to discredit Mr. Hedge on cross-examination. The appellee contended that the majority of AYH's programming was the provision of lodging facilities in exchange for a fee, including a membership to AYH, and thus it merely operated like a hotel. The appellee further argued that there was a lack of organized programming at the subject property sufficient to meet the criteria for the charitable exemption, pointing out that, based on AYH's 1.1 million overnight lodgings across the

country in calendar year 2014, only 130,000 people reportedly participated in a facilitated program, a mere 11.8% of AYH's guests.

The appellee next criticized each of the 4 signature programs offered by AYH. First, the appellee pointed out that the "Great Hostel Giveback" was available only at 7 of the appellant's properties, not including the subject property. Second, the appellee critiqued the "IOU Respect" program and "Community Hostelling Fund" as similarly limited programs, which prescribed age, income, and residency requirements and thus had minimal participation. Finally, the appellee criticized the "Sleep for Peace" program as being like any other day at the subject property with the mere addition of the signing of bed sheets.

The appellee ultimately concluded that the appellant's use of the subject property was primarily to provide inexpensive lodging to its members, and that any education it provided was merely incidental, and therefore not in furtherance of a charitable purpose.

On the basis of the evidence, the Board found that, at all relevant times, AYH provided an experiential educational experience for guests of the subject property. By providing a communal environment that encouraged guests of all ages and different walks of life to engage with one

another through everyday interactions, as well as through discussions lead by licensed educators over shared meals, AYH educated its guests in understanding and respect for people across cultural lines. AYH further enhanced this educational experience through its national programming, including exchange programs to encourage socialization and camaraderie amongst hostellers from diverse cultures, as well as through recognition of the United Nations' International Peace Day.

While the appellee criticized certain of AYH's programming for not benefitting a broad selection of recipients, the Board nonetheless found credible Mr. Hedge's testimony that AYH's formal programs and informal interactions met the standards set by the American Association of Colleges and Universities for intercultural knowledge, civic engagement, and global learning, and therefore found the programs to be educational. As will be further explained in the Opinion, because education is a traditionally charitable purpose, factors such as the number of people that are benefitted by the appellant's programs are less significant in determining the appellant's charitable status.

Moreover, membership was open to anyone at any time, including at the time someone wanted to stay at the subject

property. The minimal fees charged for membership and stays at the subject property afforded a wide cross-section of individuals the opportunity to experience the benefits provided by the appellant. The Board thus found and ruled that AYH's provision of an educational experience at the subject property constituted a charitable endeavor.

Finally, the Board found that AYH, not the individual hostel guests, occupied the subject property in furtherance of its charitable purpose. AYH employees, as representatives of AYH, provided an educational experience at the subject property that was consistent with the mission of AYH, and the delivery of that experience was through its guests living in a communal environment. As Mr. Hedge explained, "the building is our program." Moreover, the communal atmosphere and accommodations at the hostel, complete with limits on the length of stay, made it clear that guests did not have ownership or privacy rights over the hostel to the exclusion of AYH. The Board thus found that AYH occupied the subject property in furtherance of its charitable purpose during the fiscal year at issue.

Accordingly, the Board issued a decision in favor of the appellant and ordered an abatement in the full amount of the tax assessed, \$4,771.25.

OPINION

General Laws c. 59, § 5, cl. Third ("Clause Third"), provides that real estate owned by a "charitable organization and occupied by it or its officers for the purposes for which it is organized" is exempt from taxation. Clause Third defines a charitable organization as "a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth." "For purposes of the local property tax exemption, the term 'charity' includes more than almsgiving and assistance to the needy." ***New England Legal Found. v. Boston***, 423 Mass. 602, 609 (1996). "A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." ***Boston Symphony Orchestra, Inc. v. Assessors of Boston***, 294 Mass. 248, 254-55 (1936) (quoting ***Jackson v. Phillips***, 14 Allen 539, 556 (1867)).

As observed by the Appeals Court, the Supreme Judicial Court in ***New Habitat, Inc. v. Tax Collector of Cambridge***, 451 Mass. 729 (2008) provided "an interpretive lens through which we now view" charitable exemption cases. ***Mary Ann Morse Healthcare Corp. v. Board of Assessors of Framingham***, 74 Mass. App. Ct. 701, 703 (2009). As the Appeals Court explained,

[t]he number of individuals receiving services, whether they are from diverse walks of life, the fees charged to those individuals, and the relationship between the service fees and the cost of those services to the provider -- all these are factors that inform a decision under the community benefit test; where however an organization is found to be traditionally charitable in nature, these factors play "a less significant role in our determination of its charitable status" for purposes of property tax exemption.

Id. at 704 (quoting ***New Habitat***, 451 Mass. at 737)

The Supreme Judicial Court has long recognized that "bringing [recipients'] minds or hearts under the influence of education" is a traditionally charitable purpose. ***Boston Symphony Orchestra***, 294 Mass. at 254-55. The Supreme Judicial Court has further recognized that education accomplished through the promotion of cross cultural understanding and enlightenment is a charitable purpose. See ***Assessors of Boston v. World Wide Broadcasting Foundation***, 317 Mass. 598, 599 (1945) (ruling

that fostering "international understanding and co-operation" through the broadcast of radio programs "of a cultural, educational, artistic or spiritual nature" was a charitable purpose).

Because education is a traditionally charitable purpose, factors like fees and the number of people benefitted by AYH's national programs are less important in determining the appellant's charitable status. See **New Habitat**, 451 Mass. at 736-37 (ruling organization to be charitable where it had small number of beneficiaries but traditionally charitable purposes and methods) (citing **Dover v. Dominican Fathers Province of St. Joseph**, 334 Mass. 530, 539 (1956)). Instead, "we consider whether the number of an organization's beneficiaries helps to advance the organization's charitable purpose." **New Habitat**, 451 Mass. at 737 (citing **New England Legal Found. v. Boston**, 423 Mass. 602, 612 (1996) ("at any given moment an organization may serve only a relatively small number of persons" but still be found to be charitable if operating according to its stated charitable purpose)).

Moreover, the Board found that the educational experiences provided by the appellant were open to a wide cross-section of individuals. Membership in AYH was open to all, and the minimal fees charged for nightly stays -

which were reserved for the subject property's basic upkeep - allowed individuals of modest means to enjoy the educational experience provided by AYH.

The Board found that the hostel's communal environment, by its very nature and set up, encouraged guests of all ages and walks of life to engage with one another on a daily basis, both through routine interactions and through educational discussions over shared meals. The Board also found credible Mr. Hedge's testimony that AYH's curriculum met the standards set by the American Association of Colleges and Universities for intercultural knowledge, civil engagement, and global learning. By its routine operation, AYH educated its guests in understanding and respect for each other across societal lines that traditionally divide, like geography, age, and culture. For those who did participate, AYH further enhanced its guests' educational experiences through its formal educational programming, like exchange programs and recognition of International Peace Day.

The facts of the instant appeal are readily distinguishable from those at issue in the recent appeal of ***Thomas Jefferson Memorial Center at Coolidge Point, Inc. v. Assessors of Manchester-By-The-Sea***, Mass. ATB Findings of Fact and Reports 2018-89. In that appeal, the Board ruled

that a remote property -- marked by "no trespassing" signs, used to store the owner's personal property, and which hosted only sporadic events with no connection to the taxpayer's stated charitable goals of promoting history, education, or the arts -- was more akin to a buffer zone around personal property rather than charitable property under the standards of exemption set by Clause Third. ***Id.*** at 2018-113. The factors crucial in denying exemption there were not present at the subject property, which was open to all guests, including those who needed to purchase an instant AYH membership, and which furthered its mission of promoting cross-cultural understanding from the moment a guest entered the communal environment.

Finally, Clause Third requires that the property be "occupied" by the charitable organization. In cases where individuals reside at the property owned by the charity, Massachusetts courts have ruled that the occupancy requirement is satisfied so long as the residents' use is not to the exclusion of the organization, and such use enables the organization to achieve its charitable mission at the property. See ***Mary Ann Morse Healthcare Corp. v. Bd. Of Assessors***, 74 Mass. App. Ct. 701, 707 (2009) (vacating the Board's ruling that individual residents, not the charitable organization, occupied certain areas of an

assisted-living facility, where "the residents' privacy here is far from absolute").

In this appeal, AYH employees conducted and fostered the educational activities at the subject property by operating the hostel. See e.g., **New England Forestry Foundation, Inc. v. Bd. of Assessors of Hawley**, 468 Mass. 138, 158-59 (2014) (overturning the Board's denial of exemption where taxpayer presented evidence that it engaged in sustainable forestry practices and education of those practices at the subject property). AYH achieved an experiential learning experience for its guests by having them live in a communal atmosphere, where they shared meals, living space, and conversation with one another. Moreover, unlike tenancies where an occupant enjoys exclusive occupation of a property to the exclusion of the organization, such as in the low-rent apartments owned by the charitable corporation in **Charlesbank Homes v. Boston**, 218 Mass. 14, 16-17 (1914), the subject property was a communal space with rules and limits on length of stay, where guests did not have such rights to ownership or privacy. The Board thus found and ruled that AYH occupied the subject property in furtherance of its charitable endeavor.

Conclusion.

AYH occupied the subject property in furtherance of the education of its hostel guests, a traditionally charitable purpose. Therefore, the Board found and ruled that AYH met its burden of proving that the subject property met the standard for property tax exemption under Clause Third.

Accordingly, the Board issued a decision for the appellant and ordered an abatement in the full amount of \$4,771.25 for the fiscal year at issue.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board